

[REDACTED]
Beneficial Ownership Team
Department for Business, Energy and Industrial Strategy
1 Victoria Street
London
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16 May 2017

Dear [REDACTED]

Thank you for the opportunity to respond to the consultation on *Property ownership and public contracting by overseas companies and legal entities: beneficial ownership register*.

This response has been prepared on behalf of **Family Office Real Estate Advisers (FORA)** a membership organisation that represents professional real estate advisers whose clients are UHNW individuals and family offices.

FORA members include lawyers, accountants, trustees and other professionals based in the UK and Crown Dependencies.

Our comments are limited to the public register of foreign owners of UK property as public contracts falls outside of the expertise of our members.

Executive Summary

FORA is a body representing real estate advisers to UHNW families who invest in UK real estate. We are concerned that, through this policy and in particular by making the register public, the Government is contributing to a narrative amongst foreign investors that the UK is closed for refurbishment, not open for business.

There is significant concern that this policy will undermine personal and commercial privacy and will be interpreted as targeting foreign investors in order to cool the housing market. We are concerned that this will discourage inward investment to the detriment of the public interest. This inward investment is significant, with \$8.9bn of private overseas investment recorded in UK commercial real estate alone in 2016.

We are convinced that this foreign investment in UK real estate is in the public interest, contributing to jobs, taxation and the overall housing supply, extending beyond residential and office blocks to student accommodation, PRS and Care Homes.

Furthermore we know that by creating physical ties to the country the foreign owners of London's prime and super-prime properties spend money here, contributing at least £2.3 billion to London's economy annually.

We are not convinced that the policy will meet its stated aims of reducing money laundering or increasing the confidence and trust of legitimate foreign investors in the UK property market.

We would ask the Government to give serious consideration to moving forward with the register on a private basis.

Comments on specific questions

Our focus on the following section is responding to questions 8 and 9.

Question 8: Do you have any information that is relevant to our assessment of the cost and benefits of the policy to businesses, society and the economy?

Question 9: What, if any, impact do you think that the proposed policy will have on the UK property market (residential and commercial)? Please describe the impacts and provide evidence.

Public Register: Loss of foreign direct investment

We believe that the **public** nature of the register is the most problematic element of this initiative.

We are concerned that a public register will have a significant impact on financial privacy of private investors and a negative impact on their future investment decisions.

These investors are significant players in the UK property market and include foreign family offices, Ultra High Net Worth and High Net Worth Investors. As these are private investors, and not institutions such as pension funds, these individuals value their personal privacy. Estimates suggest they make up approximately 14% of total volumes in the commercial market (Source: Real Capital Analytics).

Removing privacy will have a number of negative impacts.

Most obviously by detailing in public the ownership of property it will be significantly easier to identify those individuals and families who are in fact high net worth.

The public register will lead to increased levels of speculation over levels of wealth which will further lead to unwarranted intrusion into the private lives of investors. Indeed it is easy to see how the register could become viewed as an officially sanctioned surrogate to the “Sunday Times Rich List”.

Loss of privacy will increase concerns over loss of personal safety and kidnapping, as it would not only identify wealthy individuals but also, in some circumstances, their private residence. Personal security is a feature of significant concern to prominent individuals and you will be aware, for example, that the actor Emma Watson revealed in 2016 that she had established an offshore company to protect her anonymity and safety as a result of being stalked. We note that it is proposed that there will be a similar protection regime as under the PSC regime. However, there will be concerns as to the level of proof needed of serious risk of violence or intimidation.

The proposed regime differs to the PSC regime, in that it will consequently identify residential addresses and therefore put individuals at even greater risk (whereas residential addresses are protected in the PSC regime from public access).

We are further concerned that elements of the UK media, and misinformed NGOs, may use this public information in a manner which is sensationalist and may be driven by misguided economic nationalism and a misunderstanding of the legitimate uses of offshore structuring.

It seems unlikely, given past experience, that “revelations” over the foreign ownership of this or that building will give cause to celebrate foreign investment. Unfortunately we are more likely to see simplistic narratives that fail to recognize the manifest benefits of foreign investment. This will contribute to a narrative that the UK does not welcome foreign investment and is not “open for business”.

We note that this register is intended to come hard on the heels of proposed IHT changes for Non-doms who own residential property via non-UK structures and various other changes to the taxation of UK real estate since 2013, including the introduction of ATED, ATED CGT, Non-resident capital gains tax and the additional 3% SDLT charge. When considered in the round, these changes are making clients think twice about their investments in UK real estate.

Some Responses from families to the policy

We wished to share some anonymised quotes from Single Family Offices representing UHNW families on how they see the impact of this policy. Their initial reactions suggest that the policy will be seen as part of a wider narrative of burdensome regulation and diminution of privacy:

“This policy is yet another nail in the UK’s coffin as an attractive location for investment” Family Office Executive

"There are so many things to comply with already, and this adds to that." Family Office Executive

"The family are horrified by this. Wait until they see the headlines in the papers." Family Office Executive

"We left home because we could not trust our Government. This policy will expose us both to political risk and to kidnapping. We have had ransom demands before. Unequivocally will sell our UK property if this goes ahead." Family Office Principal, Latin American Country

Furthermore one adviser cited his client, an Indian Businessman who invested in UK property. He explained that his clients' competitors were cut-throat, and would seek to use this formerly private information to smear his client as an exploitative "Oligarch".

The emerging narrative: foreigners are to blame for the housing crisis

We recognize that there is legitimate public concern over the lack of supply of affordable housing available to local workers. We also understand that this policy is not intended as a "cooling measure" or to affect an increase in affordable housing supply.

However, we are aware that this policy is being justified by commentators and the media as part of initiatives to increase the amount of affordable housing available to local workers. For example, the Financial Times headline of April 17 2017 in connection to a story on the proposed register was: *"London's housing crisis is abetted by illicit funds"*. (see <https://www.ft.com/content/dfe411bc-203c-11e7-b7d3-163f5a7f229c>).

This narrative is pernicious because it suggests that foreign investment in UK real estate has no social utility. It further suggests that investment through offshore entities is, as a matter of course, illegitimate.

In such an environment it is likely that focus on foreign investment made through offshore entities will inevitably lead to negative press and public commentary which is damaging to the UK's status as being "Open for Business."

If a narrative takes hold which is based on the myth that foreigners are to blame for the housing crisis, then it is likely the foreign investors will consider investment in the UK to be subject to further "political risk" in the future.

Indeed the government may find themselves under future pressure to take punitive action against such foreign investors.

Private Register

We understand that there is an argument that can be made that law enforcement and tax authorities should have access to up-to-date data on property ownership in the UK.

We believe a private register for competent authorities is a preferred route ahead subject to protections that the data could be securely held. This would help to achieve the policy objectives without jeopardising legitimate privacy and safety concerns.

AML Leader: Global and EU Implications

We welcome the UK taking leadership in the global fight against money laundering. However, we are concerned that the argument this policy is a logical extension of the Person of Significant Control (PSC) regime may not be the case. We are further troubled by the assumption that any competitive disadvantage realized by these regulations will be *temporary* rather than *permanent*.

Our concern is that there is no consensus in the Financial Action Task Force, the OECD or the EU that the PSC regime (or similar beneficial ownership registers) should be extended to foreign property owners. It seems reasonable to assume therefore that the UK's lead may not be followed, or that there may be a significant delay in competitors doing so.

What's worse there is no consensus amongst states on the need for the beneficial ownership information to be publicly accessible. It is likely, for example, that there will be different interpretations by EU member states as to when public access will be required under the EU's Fourth Anti-Money Laundering Directive (depending on their interpretation of the 'legitimate interest' test for public access). It is therefore possible that, whilst the UK has introduced public access for the PSC regime, other countries may consider a more private register adequate both for the PSC and any future foreign register of property (assuming they go that far, which they may not).

The UK will therefore be going both further and faster than its competitors, and it may end up creating a *permanent* black mark in the column headed: "Reasons not to invest in the UK."

If this policy does make the UK a permanent outlier, then this will in turn encourage foreign jurisdictions, including former EU partners, to attract legitimate inward investment instead of the UK.

We note that anti-money laundering policies focusing on cross border flows of capital are often considered most effective when action is taken internationally. Amongst other benefits is that this helps prevent regulatory arbitrage and ensures that no single country is punished economically by taking sensible steps to prevent money laundering.

Hence significant money laundering initiatives are normally directed through supranational organisations, including the Financial Action Task Force, the OECD and the European Union. An example would be the EU's Fourth Anti-Money Laundering Directive.

We believe this is a powerful argument to delay implementation of this policy until there is more of a consensus amongst policymakers in the EU and OECD, on the need for a foreign property regime and for that regime to be public.

Existing regime adequate to prevent money laundering

You will be aware that the vast majority of property transactions involve a professional such as a lawyer, banker or estate agent. These professionals are already required, for the purposes of AML, to undertake due diligence on clients and the source of funds.

We would also note that the Fourth Money Laundering Directive has not yet been fully implemented, so further initiatives of this significance may be premature at this stage.

Brexit

Given that regulatory equivalence will undoubtedly become part of the complex negotiations around Brexit, we believe that the UK would be best placed to delay any such regulatory initiatives until the outcome of these negotiations is better known.

This will avoid gold-plating UK regulations before we know our overall trading position and give negotiators a better position from which to negotiate future UK-EU equivalence.

Concerns of the Real Estate Investors: Not AML

A stated aim of the policy is to increase investor confidence in the UK property market. We recognise that pervasive money laundering through real estate would impact on the reputation of a market, and dent its long term investment prospects.

However there is little evidence to suggest that the UK property market is currently suffering a lack of inward investment because of reputational concerns associated with money laundering. Therefore the Government may be addressing a problem, which to a large extent, does not exist.

For example, PWC's report: *Emerging Trends in Real Estate, New market realities Europe 2017*, shows that Reputational issues associated with money laundering do not feature in the top five concerns of European real estate investor. Rather these concerns are: European economic growth, the availability of assets, currency volatility, global economic Growth, and the cost of finance.

Timing issues: Current Confidence in UK Real Estate - Brexit uncertainty

Research into confidence in the UK Real Estate market is a mixed bag, suggesting that the UK's enviable position should not be taken for granted.

Knight Frank's *The Wealth Report 2017* ranks cities by their attractiveness to investors. London remains ranked number one, followed by New York, Hong Kong, Shanghai and Los Angeles.

Encouragingly the 2017 report states that the countries private property investors are most likely to invest in rank the UK as No1. The top six are:

Position	Country
1	UK
2	US
3	Germany
4	France
5	Singapore
6	Spain

However, PWCs report *Emerging Trends in Real Estate, New market realities Europe 2017*, suggests that the timing of this policy initiative is not favorable:

"Europe's real estate industry has a sharply more negative view of the UK's main markets, and London in particular. The UK capital now languishes fourth from bottom [of the table of most attractive investment opportunities] at Number 27 [a fall of 12 places from last year], just ahead of Istanbul, Athens and Moscow."

And the UK's second-tier cities are also marked down. Birmingham – last year's number 6 – slumped to Number 22, a fall of 16 places.

PWC state: *"...number 27 is an extraordinarily low ranking for Europe's largest and most liquid real estate market, but London's fall speaks volumes about the potency of the Brexit effect."*

This suggests that the timing of this policy, adding as it does to Brexit uncertainty, is not propitious and should be reconsidered.

Importance of Foreign Private Investment to UK Real Estate

Our members represent private investors, who are key players in the global market for real estate. Their importance is also a growing trend over time.

Knight Frank research suggests private investors have accounted for nearly 20–25% of all transaction volumes over the last 10 years, and this rose to 27% in 2017.

Focusing on foreign investors suggests they make up approximately 14% of total volumes in the UK commercial market (Source: Real Capital Analytics/Knight Frank).

Funds, institutions and other investors made up the remaining investor classes, accounting for 73% (Knight Frank's *The Wealth Report* 2017, p43).

Knight Frank's Cities Report (p46) demonstrates that sales to foreign investors in 2016 were significant. The figures for commercial sales to foreign investors to the world's top eight cities were:

Manhattan \$26.5bn

London \$25.0bn

Paris \$7.4bn

Sydney \$7.0bn

Shanghai \$6.9bn

Los Angeles \$6.2

Madrid \$5.6

Berlin \$5.4

The total **private** overseas investment into UK **commercial** real estate in 2016 was \$8.9bn. 65% were office transactions. (Source: Knight Frank).

In addition the PWC Report (*Emerging Trends in Real Estate, New market realities Europe 2017*, page 25) indicates that of the alternative sectors being considered by commercial investors Student Housing (61%) and Retirement Care/Homes (45%) were amongst the most popular. Investment into such areas is generally considered to be socially useful.

Source: <https://www.pwc.com/gx/en/asset-management/emerging-trends-real-estate/europe/emerging-trends-in-real-estate-2017.pdf>

In terms of the total historic foreign investment, we note 2015 estimates that £122 billion of property in England & Wales is owned by offshore companies.

Wider Benefits of Foreign Investment - Westminster Study

In addition to direct investment in real estate, there are wider benefits to foreign investment in property. Property ownership fastens wealthy investors to a jurisdiction in ways that other investments do not. Investors often spend significant amounts of time in the jurisdiction with associated economic benefits.

According to the independent report '*The Prime Residential Market in Westminster*' by the economic consultancy Ramidus Consulting, owners of London's prime and super-prime properties contribute at least £2.3 billion to London's economy.

The research, commissioned by officers at Westminster City Council, revealed that owners of properties worth more than £15 million spend around £4.5 million each in

London annually, and those owners in the £5 million to £15 million range spend around £2.75 million.

(Source: see <https://www.westminster.gov.uk/prime-homes-drive-housing-and-economy>).

PRACTICAL ISSUES

There are other issues in relation to the register:

Increased Opportunities for Crime: Fraud and Identity Theft

We acknowledge that the public register offers professionals the opportunity to double-check information about clients to ensure its authenticity, and that this may reduce incidences of fraud.

Equally, we are concerned that the public nature of the register may in some instances actually increase opportunities for fraud.

You may be aware that the Information Commissioner's Office (ICO) has recently warned HM Treasury that trust beneficiaries would be placed at a 'real risk of identity theft' by current draft EU legislation that will make trust registers *fully open to the public*.

The ICO is concerned about proposed amendments to the EU Fourth Anti-Money Laundering Directive (*Directive 2015/849*, or 4AMLD), stressing that it will be important to ensure that any final decision on this proposed amendment, and its UK transposition if agreed, takes full account of data protection law and the right to privacy.

We would ask the government to consider whether concerns, and possible safeguards, about the public nature of the trust register being introduced under the implementation of the 4th Money Laundering Directive could be read across into this initiative, if it were to go ahead.

Separately, the Land Registry has identified that certain categories of real estate owners may be more susceptible to registration frauds.

They state that owners who live abroad are particularly vulnerable as they often own properties without a legal charge. Attempts could be made to sell or charge their property by use of identity fraud.

The Land Registry has identified the properties particularly vulnerable to registration frauds include those types of property one would expect to see on the public register, namely :

- high value properties without a legal charge
- high value properties with a legal charge in favour of an individual living overseas

- Owners who live abroad

Source: Law Society Practice note <http://www.lawsociety.org.uk/support-services/advice/practice-notes/property-and-registration-fraud/>

Bedding in of existing PSC regime

Before bringing forward this policy we would recommend a thorough evaluation of the PSC regime.

We understand from a recent Global Witness report summarized in ICSA's Governance & Compliance magazine that there were a number of significant data flaws and signs of non-compliance with the law within the 1.3 million companies which had already filed beneficial ownership information with the Registrar of Companies as at 17 November 2016. Source: <https://www.icsa.org.uk/knowledge/governance-and-compliance/features/february-2017-the-end-of-anonymous-ownership>

This administrative and data issues suggest UK companies may be having difficulties understanding the complex requirements and may be an argument for delaying the overseas register until the PSC regime has been fully bedded in and understood. .

Impact on Tax Receipts: ATED

We would anticipate that a public register would, in many instances, remove the utility of enveloping properties for the purposes of privacy. In that event the owner would cease to pay the Annual Tax on Enveloped Dwellings (ATED).

In 2015–2016 ATED receipts were £175m. Thus, over ten years, this policy could risk costing the exchequer over £1bn.

Not credible deterrent to Money Laundering

The register may not be effective as a deterrent to money laundering. This is because we understand that the public register is to be self-certifying because the costs of full-scale verification are prohibitive.

We question whether this is a credible approach as the idea that genuine money launderers will give the correct information is unlikely.

Exemptions

We understand that sensitive individuals, such as foreign heads of state, may be exempt from the requirements of the register.

Nevertheless buildings exempted from the register would automatically fall under suspicion of being owned by those listed in the exemption criteria. Accordingly

these exemptions give rise to further, not less, public interest in the owners of those properties.

Foreign Equivalence

We understand and welcome the fact that property owned by corporate vehicles located in foreign regimes which have an equivalent policy will not be listed as this would duplicate information available in that jurisdiction.

We would argue that equivalence should extend to jurisdictions, such as the Crown Dependencies, where such information is available to competent authorities on request.

Company Service Providers in the Crown Dependencies are regulated pro-actively and the Governments of those jurisdictions ensure that information on beneficial ownership is up-to-date. We therefore consider this approach should be considered as potentially equivalent to the UK regime.

Lack of evidence of mischief

We are not convinced that the scale of the problem requires such radical action. The figures quoted for illicit funds under investigation in the Consultation document are £180m over ten years, or £18m a year. Further investigation on the scale of the issue is therefore required in order to make a sensible cost-benefit analysis.

We believe the apparent law enforcement view of offshore companies that hold UK property as a result of widespread wrongdoing to be invalidated. Our experience is that a major driver of these offshore structures, other than privacy, was to benefit from the UK's Non-domicile regime. So that when a non-domiciled owner of an offshore company died, the rate of 40% IHT would not apply, whereas it would if a person owned the property outright.

RESEARCH PROJECT

We understand that BEIS will conduct a survey on the likely impact of this policy on inward investment. We welcome this and consider this essential.

We would be delighted to help BEIS reach prospective investors and/or provide assistance to the company undertaking the research to achieve the same.

ANSWERS TO SPECIFIC QUESTIONS

Question 1: Do you agree that all legal forms that can hold properties should be in the scope of the new register's requirements? If not, what legal forms should we consider an exemption for and why?

No further comment.

Question 2: Is the suggested definition of leasehold appropriate?

No further comment.

Question 3: Will setting the leasehold definition at leases over 21 years create any unintended consequences?

No further comment.

Question 4: Do you agree that the definition of beneficial owner for the new overseas register should be aligned to the definition of PSC in the PSC regime?

No further comment.

Question 5: Do you agree that entities that are not similar to UK companies limited by shares should use these adaptations to identify their beneficial owners?

No further comment.

Question 6: Do these adaptations provide sufficient flexibility in the beneficial owner conditions to apply to most legal entities? If not, what additional adaptations should there be?

No further comment.

Question 7: What methods of raising awareness would be most effective?

No further comment.

Question 8: Do you have any information that is relevant to our assessment of the cost and benefits of the policy to businesses, society and the economy?

Question 9: What, if any, impact do you think that the proposed policy will have on the UK property market (residential and commercial)? Please describe the impacts and provide evidence.

See above.

Question 10: Do you agree that the duration of the period given to overseas entities to comply with the new requirements should be one year?

No further comment.

Question 11: Is a system of statutory restrictions and putting notes on the register, backed up by criminal offences, a comprehensive way to ensure compliance?

No further comment.

Question 12: Do you agree that we should prevent any beneficial interest in the property passing to an overseas legal entity that does not have a valid registration number at completion or settlement?

No further comment.

Question 13: Do you agree that the most appropriate way to do this would be to void the transfer document?

No further comment.

Question 14: Is there another way that we could achieve this result?

No further comment.

Question 15: Which is your preferred option for procurement and why?

Question 16: Do you agree that the information on the new register for overseas entities should be the same as the information required under the PSC regime?

No further comment.

Question 17: Do you agree that entities unable to give information about beneficial owners should be asked to provide information about their managing officers?

No further comment.

Question 18: Is there any additional information that we should ask for from entities that are unable to give information about their beneficial owners?

No further comment.

Question 19: Is a requirement for an update every two years appropriate?

No further comment.

Question 20: Would a criminal offence be an appropriate way of enforcing the requirement to update information?

Informing owners

Enforcement will be problematic since the Land Registry can contain out-of-date information so contacting owners will be difficult. Criminal penalties therefore may create a significant number of owners who are criminalised.

Counterparty Risks

The process needs to allow for the fact that some transactions may involve an unwilling beneficial owner, who can effectively veto the sale or holding it to ransom by refusing to confirm their details (needed to enable the company to register). Making the failure to update a criminal offence may be helpful, but enforcing those penalties against a foreign owner may prove problematic.

Question 21: Do our proposals achieve the right balance between ensuring compliance and enabling overseas entities to maintain existing assets?

No further comment.

Question 22: Are these mechanisms enough to deal with situations where bidders provide false beneficial ownership information or do not keep their information up to date?

No further comment.

Question 23: Do you think that this provides the correct balance between protecting individuals from harm and ensuring transparency of how properties are owned?

Broadly no, see commentary above.

Question 24: Are there additional situations we should consider where protections should be granted?

Renewal of Protection Regime

We are presently unclear if there is a requirement to re-apply for the Protection regime every two years.

Given property can be held for long period of time it would be necessary for those under the Protection Regime to have some certainty that the regime would continue for a reasonable period.

Delays Caused by the Protection Regime

We understand that the process of obtaining a registration number will be automated and therefore should be relatively instantaneous. However, we also understand that the Protection Regime process could take a month.

We are concerned that the delay and uncertainty associated with an application to the protection regime may void some transactions.

Although we understand that it is possible to make an application in advance of the transaction, this may not be practically possible.

In that event a buyer might be concerned that they would not exchange until they knew they had the protection regime in place.

Furthermore It would be useful if those who have previously been granted the protection regime could be certain that it would apply to future transactions without the need to regularly reapply.

Question 25: Are there other situations where exemption from putting information on the register should be permitted for entities participating in procurement?

Question 26: How can we best ensure that only legitimate lenders are able to repossess and dispose of a property with a restriction against it?

No further comment.

Question 27: We are interested in views and evidence of other commercial transactions that could be disrupted by the proposed restrictions regime.

Closing structure comes very late in transaction

Clients frequently transact in one entity and later change ownership to another. This means the actual buyer is decided on and set up just before closing, often the same day. The registration process will need to take into account this process.

Long Transaction Periods

Equally, property transactions can also take a very long time (eg development), so a long transaction period may invalidate the registration.

Question 28: Are there additional third party impacts that should also be addressed?

The register may distort the nature of property investment for those determined to protect their privacy in these ways:

- Buyers may establish collective structures to ensure that no single person meets the 25% threshold (although we note that they would be caught by the regime if they acted jointly – if the same tests in the PSc regime are applied to this regime).
- Buyers may hold property through structures and arrangements, such as Trusts, if they do not reveal their identity
- The register may introduce a level of uncertainty into transactions. There is an expectation that, should the policy proceed, the requirements to update the register will become part of standard contract terms. However, it should be noted however, that enforcement could remain an issue if the owner is overseas.

ENDS

We are grateful for the opportunity to contribute to this consultation.

Yours sincerely

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On behalf of FORA

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